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CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 1219

IRVING MALBIN,

Petitioner,

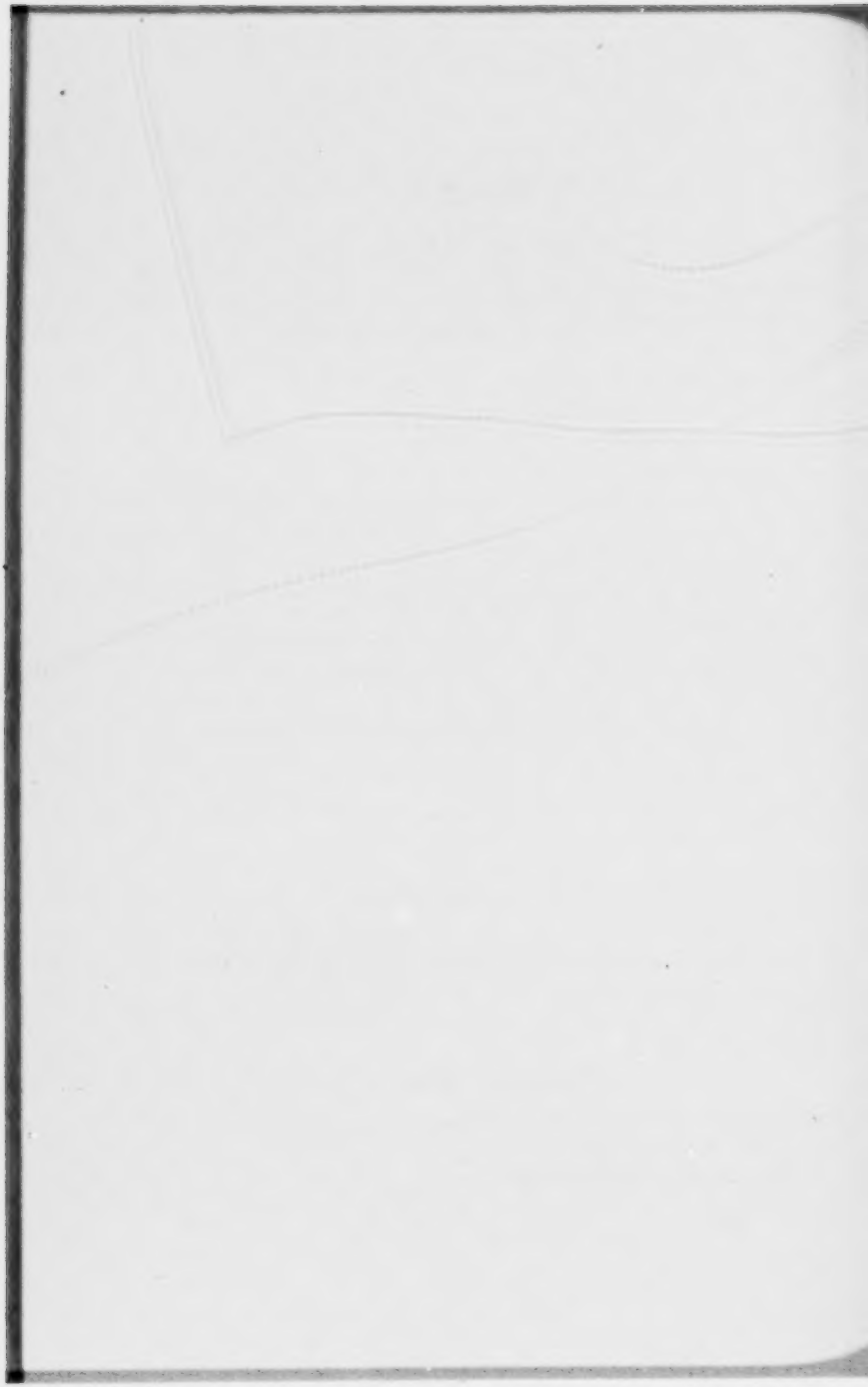
vs.

THE UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

JACK KRANIS,
Counsel for Petitioner.

A. HARRY WEISSMAN,
Of Counsel.



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IRVING MALBIN,

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THE UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully shows:

I

Summary Statement of the Matter Involved

This is a criminal case commenced by the filing of an Information in the Office of the Clerk of the United States District Court, Eastern District of New York, on August 31st, 1944.

The information originally contained 17 counts charging the defendant with having sold various quantities and types of meat in violation of the Emergency Price Control Act of 1942. The 17th count of the Information charging failure to keep complete and accurate records was dismissed on motion of the United States Attorney.

There has been no change of parties. On July 2, 1945, the defendant pleaded guilty to Counts 1-16 inclusive of the Information before the Hon. Mortimer W. Byers, the United States District Judge.

On July 12, 1945, the defendant was sentenced to be imprisoned for three months each on Counts 1-16 inclusive to run concurrently and to pay a fine of $1,000.00. A motion in arrest of judgment was denied.

The defendant was released on bail by the Hon. Augustus N. Hand, United States District Judge, on motion in the sum of $1,000.00 pending appeal, which bond was posted in the office of the Clerk, United States District Court, Eastern District of New York. The fine of $1,000 was paid in escrow into the office of the said Clerk.

The petitioner herein appealed from the judgment to the Circuit Court of Appeals for the Second Circuit, which affirmed with an opinion (See Appendix "A").

Questions Presented

1. Did the Court err in imposing sentence and entering the judgment of conviction in view of the fact that the Information failed to charge an offense against the United States and that the facts alleged do not support a judgment of conviction?

2. Did the court err in denying the motion in arrest of judgment which was made after the entry of the plea of guilty and after the sentence?

3. Do the facts set forth in counts 1 through 16 of the Information constitute or allege an offense against the United States?

Reasons Relied Upon For Allowance of Writ

1. The great importance of the Emergency Price Control Act of 1942 and the effect of the Stabilization Act of 1942, amendatory thereof to the United States, to the business world and legal profession, and the need of an authoritative opinion, particularly as to the conflicting penal provisions of these Acts, calls for a construction of the Acts by this Court.

2. The decision of the Circuit Court of Appeals herein, holding that it was unnecessary for the Price Administrator to obtain prior approval of Maximum Price Regulation 169 before taking any action with respect thereto is contrary to the language expressed in Section 3(a) of the Emergency Price Control Act of 1942, as amended June 30th, 1944, and is contrary to the manifest intentions of the Legislature.

3. The decision of the Circuit Court of Appeals held that the 1944 amendment of the aforementioned Emergency Price Control Act (50 U. S. C. A. Appendix Section 924e) sets up a procedure to meet all questions raised in the proceeding herein. However, the Emergency Court of Appeals mentioned that the foregoing statute has repeatedly and continually refused to pass upon the validity of Maximum Price Regulation No. 169. The said Emergency Court of Appeals has repeatedly held that they would not so pass upon any protest filed against the said Maximum Price Regulation No. 169 because, as it is claimed by the said Emergency Court of Appeals, the situation or complaints set forth in the Protests filed against Maximum Price Regulation No. 169 has been cured by Maximum Price

Regulation No. 574. It is therefore submitted that the Emergency Court of Appeals has divested itself of the exclusive jurisdiction to determine the validity of Maximum Price Regulation No. 169. Therefore the questions presented herein are properly before the Court.

Wherefore your petitioner prays that a Writ of Certiorari issue under the seal of this Court directed to the Circuit Court of Appeals for the Second Circuit, forthwith to certify and send to this Court a full and complete transcript of the records and proceedings of said Court had in the cause numbered and entitled on its docket "No. 40112 of the August Term, 1944 United States of America, Plaintiff-Appellee against Irving Malbin, d/b/a Malbin Packing Company, Defendant-Appellant," to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States, that the judgment herein of said Circuit Court of Appeals be reversed by this Court, and for such other and further relief as to this Court may seem just and proper.

Dated: May 10th, 1946.

JACK KRANIS,
Counsel for Petitioner.

A. HARRY WEISSMAN,
Of Counsel.